§ 222, notes; *Scovill* v. *Thayer*, 105 U. S. 143.

Statute of Limitations.—With reference to this defense but little need be said. Where a subscription does not become payable until a call or demand is made, the right of action for collection of the assessment does not arise until the call or demand has been made, and the statue of limitation does not begin to run until the right of action accrues: *Banet* v. *Alton & St. Louis R. R. Co.*, 13 Ill. 513; *Spangler* v. *Ind. & Ill. Cen. R. R. Co.*, 21 Id. 276; *Cole* v. *Joliet Opera House Co.*, 79 Id. 96; *Glenn* v. *Williams*, 60 Md. 93; *Glenn* v. *Semple*, 80 Ala. 159; *Glenn* v. *Springs et al.*, U. S. C. Ct. W. Dist. N. C. Dec. T. 1885, 26 Fed. Rep. 494; *Glenn* v. *Saxton*, 68 Cal. 353; *Allibone* v. *Hager*, 46 Pa. St. 48; *Curry* v. *Woodward*, 53 Ala. 371; *Harmon* v. *Page*, 62 Cal. 448; *Falmouth & L. T. Co.* v. *Shawhan*, 107 Ind. 47; *Gibson* v. *The C. & N. R. T. & B. Co.*, 18 Ohio St. 396; *Scovill* v. *Thayer*, 105 U. S. 143, 155.

We have examined but two or three of the many questions arising out of the efforts of sharetakers to secure the benefits of their subscription and to shirk its responsibilities. In conclusion, we may quote the language of SHERWOOD in *Fisher* v. *Seligman*, 75 Mo. 26:

"There have been many devices, many schemes, many cunningly devised transactions, whereby men have sought to receive every benefit, and yet shirk every burden incident to the position of a stockholder; but such devices have generally come to naught. The courts have been sedulous in their endeavors to bring about such a result."

ADELBERT HAMILTON.

Chicago, Nov. 15, 1887.

Supreme Court of Alabama.

McDONALD *v.* STATE.

The act approved February 28, 1887, which requires all railroad engineers engaged in running a train of cars or engine used for the transportation of persons, passengers, or freight on the main line of any railroad in this State to be examined and licensed by a board appointed by the governor and makes it a misdemeanor, punishable by fine and hard labor, for any engineer to act in that capacity without such examination and license, is not a regulation of interstate commerce, but an internal police regulation which the State had undoubted power to enact as a law.

The said act does not confer judicial powers on the board of examiners, nor does it deprive the citizen of his liberty or property without due process of law.

APPEAL from City Court, Montgomery county.

Prosecution for operating locomotive engine without license.

Lorenzo McDonald, the appellant, was arrested on affidavit before the County Court of Montgomery and upon conviction therein appealed to the City Court of Montgomery. The com-

plaint filed in the latter court charged that "he, being an engineer of a railroad train in said State, did drive, operate, or engineer a train of cars or engine upon the main line or road-bed of the Western Railway of Alabama, which said Western Railway was a railroad in said State and was at the time used for the transportation of persons, passengers, or freight, without having first undergone an examination and obtained a license as required by law." A second count in the indictment charges the same offense, concluding, "without first having applied to the board of examiners provided by law, to be examined by said board, and without having first been examined by said board or by two or more members thereof, in practical mechanics and concerning his knowledge of operating a locomotive engine and his competency as an engineer as required by law." The defendant pleaded not guilty.

The evidence tended to show that on May 24, 1887, the defendant was an engineer in the State of Alabama, on a railroad therein; that he was not nor had he been so employed in said State previous to January 28, 1887; that he had never applied to the board of examiners provided by law nor been examined nor obtained a license as an engineer; that on said May 24, 1887, he operated an engine and train in said State on the Western Railway of Alabama and in the county of Montgomery; that the Western Railway of Alabama was and is operated under one management with the Atlanta and West Point Railroad in the State of Georgia, the two railroads forming a continuous line from Montgomery, Alabama, to Atlanta, Georgia, for the transportation of passengers and freight and the United States mail; that said train, so operated by defendant, was a through train from Atlanta to Montgomery; that said engine and train were and are used in transporting freight shipped from Atlanta and points beyond to Montgomery and points beyond in the State of Alabama and in other States west and south of the State of Alabama.

This being substantially all the evidence, the court refused to give the general charge at the request of defendant and gave the general charge at the request of the State. The defendant excepted to such actions of the court. Verdict and judgment having been rendered against the defendant, he appeals to this court.

The first two sections of said act are as follows: "§ 1. That it shall be unlawful for the engineer of any railroad train in this State to drive or operate or engineer any train of cars or engine upon the main line or road-bed of any railroad in this State which is used for the transportation of persons, passengers, or freight, without first undergoing an examination once and obtaining a license as hereinafter provided. § 2. That before any locomotive engineer shall operate or drive an engine upon the main line or road-bed of any railroad in this State used for the transportation of passengers or persons or freight, he shall apply to the board of examiners hereinafter provided for in this act and be examined by said board, or by two or more members thereof, in practical mechanics and concerning his knowledge of operating a locomotive engine and his competency as an engineer." Acts Ala. 1886–87, pp. 100–102.

Troy, Tompkins & Loudon (with whom were *Thos. G. Jones* and *Geo. P. Harrison*), for appellant.

T. N. McClellan, Atty.-Gen., *contra.*

SOMERVILLE, J.—The Act of 1886–87, pp. 100–102, requires locomotive engineers in this State to be licensed after examination as to competency and fitness by a board authorized to be appointed by the governor for that purpose. Acts 1886–87, pp. 100–102. It is insisted that the act is unconstitutional for several reasons.

The first objection is that it is a regulation of commerce between the States and for this reason violative of the clause of the United States Constitution which vests in Congress the power to regulate such commerce. In our opinion it is a mere internal police regulation which was competent to be provided for by the State as a proper mode of preserving the safety of the traveling public and other persons whose lives may well be imperiled by the negligence of ignorant and incompetent engineers. It incidentally affects interstate commerce but does not amount to a regulation any more than laws licensing, by State authority, pilots of vessels engaged in such commerce which have always been held free from constitutional objection. The laws of the several States have undertaken not only to license pilots in such

cases, but have gone so far as to regulate the whole subject of pilotage and pilots; fixing their qualifications, employment, and pay, including the tender of services, and, on refusal to employ, authorizing the recovery of half pay. These laws have been sustained not on the ground that Congress had recognized them as valid, for it is clear that no such recognition could confer any constitutional power on the States which they did not already possess, but upon the ground that they were necessary police regulations, having in view the public safety, or, if regulations of commerce in a certain sense, they were local regulations of such a nature as to be permissible until Congress itself undertook to exercise the same power by legislating on the subject: *Cooley* v. *Board of Wardens of Philadelphia*, 12 How. 323; *Ex parte Niel*, 13 Wall. 236.

There are many police regulations of this nature incidentally affecting commerce which have been sustained by the courts. It is well settled that the States may pass laws requiring railroads running from one State to another to fence their tracks, to ring a bell, or blow a whistle on approaching a crossing or highway, to erect gates or bridges, and keep flagmen at dangerous places on highways, to stop for reasonable times at certain stations, to fix and post printed time-tables, rates of fare and freights, and other things of like character, having reasonably in view the prevention of fraud and extortion or other injury and the preservation of the safety of the public: *Railroad Co.* v. *Fuller*, 17 Wall. 560; *Mobile, etc., R. Co.* v. *State*, 51 Miss. 137; *Com.* v. *Eastern R. Co.*, 103 Mass. 254; *People* v. *Boston & A. R. Co.*, 70 N. Y. 569; *Railroad Com'rs* v. *Portland, etc., R. Co.*, 63 Me. 269; *Davidson* v. *State*, 4 Tex. App. 145; Tied. Lim. Police Powers, § 194; Cooley, Const. Lim. (5th ed.) *579 *et seq.*

The exaction of a license in such a case does not impose a direct burden upon interstate commerce or interfere directly with its freedom. It only "acts indirectly upon the business through the local instruments to be employed after coming within the State." It does not belong to that class of subjects which are national in their character and admit of but one system of regulation for the whole country, having in view the prevention of unjust discrimination and the preservation of the freedom of

transit and transportation from one State to another: *Wabash, etc., Ry. Co.* v. *Illinois*, 118 U. S. 557, and cases there cited.

The case of *Robbins* v. *Shelby Co. Taxing District*, 120 U. S. 489, does not conflict with the foregoing views. The license there exacted of foreign drummers was held to be a tax on interstate commerce. It was not a police regulation. Even in that case the stronger reasoning, in our judgment, is with the able opinion of Chief Justice WAITE, concurred in by Justices FIELD and GRAY. In *Port of Mobile* v. *Leloup*, 76 Ala. 401, we sustained as constitutional an ordinance of the port of Mobile imposing a license tax upon a telegraph company doing business in that city between this and other States which was interstate commerce. In this we followed as authority the case of *Osborne* v. *Mobile*, 16 Wall. 479, in which the United States Supreme Court sustained a similar license on an express company under like circumstances. The same question had been before decided in *Southern Exp. Co.* v. *Mayor, etc., Mobile*, 49 Ala. 404. In *City of New Orleans* v. *Eclipse Tow-Boat Co.*, 33 La. Ann. 647, in like manner, a city ordinance exacting a license fee from the owner of tow-boats running on the Mississippi River to and from the Gulf of Mexico, was held not unconstitutional as a regulation of commerce upon authority of the same decision. In *American Union Tel. Co.* v. *W. U. Tel. Co.*, 67 Ala. 26, we held that the provisions of our Constitution prohibiting foreign corporations from doing business in this State without having at least one known place of business and an authorized agent therein, was a legitimate exercise of the police power, and was not a regulation of commerce.

The case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, does not, in our opinion, lend any favor to the contention of appellant. The municipal ordinance there pronounced invalid vested in the board of supervisors the arbitrary power to license public laundries at their own mere will and pleasure, without regard to discretion in the legal sense of the term, and without regard to the *fitness* and *competency* of the persons licensed or the propriety of the locality selected for carrying on such business. Properly construed, this case favors the views above expressed by us.

2. The other objections to the law based on constitutional grounds, are, in our opinion, not maintainable. It does not con-

fer judicial power on the board appointed by the governor nor does it deprive the citizen of his liberty or property without due process of law. The vesting by legislative authority of the power to license various occupations and professions requiring skill in their exercise or the observance of the law of hygiene or the like, have never been construed to be obnoxious to these objections. It has been uniformly held that laws providing by accustomed modes for the licensing of physicians, lawyers, pilots, butchers, bakers, liquor dealers, and, in fact, all trades, professions, and callings, interfere with no natural rights of the citizen secured by our Constitution: *Mayor, etc., Mobile* v. *Yuille*, 3 Ala. 137; *Dorsey's Case*, 7 Port. (Ala.) 295; *Cooper* v. *Schultz*, 32 How. Pr. 107, and authorities cited; *Coe* v. *Schultz*, 47 Barb. 64; *Metropolitan Board of Health* v. *Heister*, 37 N. Y. 661; *Reynolds* v. *Schultz*, 34 How. Pr. 147; *People* v. *Medical Society of N. Y.*, 3 Wend. 426; *Metropolitan Board of Excise* v. *Barrie*, 34 N. Y. 657: *Barbier* v. *Connolly*, 113 U. S. 27; *Soon Hing* v. *Crowley*, 113 U. S. 703, *Slaughter-House Cases*, 10 Wall. 273.

The rulings of the court accord with these views and the judgment is affirmed.

General Principles.—In *Mobile* v. *Kimball*, 102 U. S. 691, commenting upon the commercial clause in the Federal Constitution, the court said: "The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character and require uniformity of regulation, affecting alike all the States; others are local or are mere aids to commerce and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, purchase, sale, and exchange of commodities. Here there can of necessity be only one system or plan of regulation and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and against the products and citizens of other States."

In *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, the court said: "It is also an established principle, as already indicated, that the only way in which commerce between the States can be legitimately affected by State laws, is when by virtue of its police power and its jurisdiction over persons and property within its limits, a

State provides for the security of the lives, limbs, health, and comfort of persons and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries, and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to the health or morals of the community; the imposition of taxes upon persons residing within the State or belonging to its population and upon avocations and employments pursued therein, not directly connected with foreign or interstate commerce or with some other employment or business exercised under authority of the Constitution and laws of the United States; and the imposition of taxes upon all property within the Sta e mingled with and forming part of the great mass of property therein. * * * And no discrimination can be made by any such regulations adverse to the persons or property of other States; and no regulation can be made directly affecting interstate commerce."

It thus appears that the power of Congress to regulate commerce is exclusive upon subjects of a national character, requiring uniformity of regulation; while upon subjects of a local nature, theState may legislate in the absence of conflicting Federal legislation. When Congress assumes to regulate subjects of the latter class, such regulations supersede those of the State: *Spraigue* v. *Thompson*, 118 U. S. 90; *Morgan* v. *Louisiana*, 118 Id. 455; *Pensacola Tel. Co.* v. *West Un. Tel. Co.*, 96 Id. 1; *Gibbons* v. *Ogden*, 9 Wheat. 1; *The Clymene*, Dist. Ct., E. Dist. Pa., Oct. 12, 1881, 9 Fed. Rep. 164; *Sinnot* v. *Davenport*, 22 How. 227.

While the foregoing principles have been generally recognized, it is impossible to harmonize all the conflicting decisions with any well defined general rules. In *Hall* v. *De Cuir*, 95 U. S. 485, the court said: "The line which separates the powers of the States from the exclusive power of Congress is not always distinctly marked and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must in all cases be located. It is far better to leave a matter of such delicacy to be settled in each case, upon a view of the particular rights involved."

2. *Pilotage*.—In the absence of Federal legislation, it is competent for the State to pass laws regulating pilotage, providing for licensing pilots, fixing their qualifications and pay, requiring vessel owners to employ them, and even to pay for their services when tendered though not accepted: *Wilson* v. *McNamee*, 102 U. S. 572; *Cooley* v. *Board of Wardens*, 12 How. 299; *In re McNeil*, 13 Wall. 236. The power to regulate pilotage, however, is included in the power of Congress to regulate commerce, and Federal regulations on the subject are controlling. Thus a pilot-boat licensed in Delaware under Federal laws may pilot vessels into Pennsylvania ports despite the conflicting laws of the latter State: *The Clymene*, *supra*. See, also, *Spraigue* v. *Thompson*, 118 U. S. 90.

3. *Bridges and Dams*.—Unless Congress interferes, the State may authorize the construction of bridges across navigable streams and the passage of

ordinances to regulate them. When deemed best for public interests, it may even close such streams by permitting the erection of dams and bridges without draws: *Escanaba Co.* v. *Chicago*, 107 U. S. 678; *Pound* v. *Turck*, 95 Id. 459; *Cardwell* v. *Bridge Co.*, 113 Id. 208, 422; *Wilson* v. *Black-bird, etc., Co.*, 2 Pet. 245; *Atkinson* v. *P. & T. R. Co.*, Id. 252; *U. S.* v. *New Bedford Bridge*, 1 Wood. & M. 401; *Hatch* v. *Wallamet Bridge Co.*, 7 Sawy. 127; *People* v. *P. & S. R. Co.*, 15 Wend. 113. See, also, *Gilman* v. *Philadelphia*, 3 Wall. 713.

4. *Harbor Improvements.*—The placing of buoys and beacons, the removing of obstructions, erection of wharves, etc., are proper exercises of the police powers of the State: *Mobile* v. *Kimball*, 102 U. S. 691; *Packet Co.* v. *Catlettsburg*, 105 Id. 559.

5. *Harbor Regulations, etc.*—"Local authorities have the right to prescribe at what wharf a vessel may lie, and how long she may remain there, where she may load or take on board particular cargoes, where she may anchor in the harbor and for what time, and what description of light she shall display at night to warn the passing vessels of her position and that she is at anchor and not under sail:" *Cushing* v. *Ship John Fraser*, 21 How. 184; *Packet Co.* v. *Catlettsburg*, 105 U. S. 559.

State laws requiring logs floated on navigable waters to be rafted, and laws providing for compensation for injuries to persons and property on board vessels or along the shore of such waters, are not unconstitutional: *Scott* v. *Willson*, 3 N. H. 321; *Sherlock* v. *Alling*, 93 U. S. 99; *Johnson* v. *C. & P. Elevator Co.*, 119 Id. 388.

6. *Wharfage.*—A duty of tonnage is a tax levied for the mere privilege of entering and doing business in a harbor, and is not only such a regulation of commerce as the State may not impose, but is also expressly forbidden elsewhere in the Federal Constitution. But the charging of a reasonable compensation for the use of a public wharf by a vessel engaged in interstate or foreign commerce is permissible, and such a charge is not a duty of tonnage, though it is proportioned to the tonnage of the vessel: *Ouachita Packet Co.* v. *Aikin*, 121 U. S. 444; *Transportation Co.* v. *Parkersburg*, 107 Id. 691; *Packet Co.* v. *Catlettsburg*, 105 Id. 559; *Packet Co.* v. *St. Louis*, 100 Id. 423; *Vicksburg* v. *Tobin*, 100 Id. 430; *Packet Co.* v. *Keokuk*, 95 Id. 80; *Cannon* v. *New Orleans*, 20 Wall. 577.

An ordinance providing for the collection of wharfage fees of such vessels only as bear the products of other States, is a discrimination against such products and is unconstitutional: *Guy* v. *Baltimore*, 100 U. S. 434.

7. *Regulation of Carriers.* — State laws requiring railroads to fence and otherwise guard their tracks, to provide suitable depots and depot facilities, to erect bridges and construct grades and crossings in a prescribed manner, regulating the running of trains, providing for the fixing and posting of schedules of rates are proper exercises of the police power: *State* v. *C., St. P., M. & O. R. Co.*, 19 Neb. 476; *People* v. *B. & A. R. Co.*, 70 N. Y. 569; *Railroad Co.* v. *Fuller*, 17 Wall. 560; Cooley, Const. Lim., 579, 580.

A State law providing a penalty for the failure to transmit properly telegrams has been declared constitutional even as applied to telegrams sent out of the State: *West. Un. Tel. Co.* v. *Ferris*, 103 Ind. 91. Likewise a statute forbidding railroads to limit their liability as common carriers: *Hart* v. *C. & N. W. Ry. Co.*, 69 Ia. 485. Likewise a statute providing a penalty for charging greater rates than the bill of lading called for, and for refusing to deliver the goods: *L. R.*

& F. Ry. Co. v. *Hanniford*, S. Ct. Ark., June 25, 1887.

A statute which abrogates the common law remedies for the wrongful exclusion of passengers on railroads is unconstitutional so far as it relates to the carriage of persons across State lines: *Brown* v. *M. & C. R. Co.*, C. Ct., W. Dist. Tenn., Oct. 30, 1880, 5 Fed. Rep. 499. So is a statute requiring railroad companies to transfer freight and passengers at the termini of their lines only: *Council Bluffs* v. *K. C., St. J. & C. B. R. Co.*, 45 Ia. 338. So is a State law which requires common carriers to carry colored passengers in the same apartments with whites: *Hall* v. *De Cuir*, 95 U. S. 485. So is a statute regulating the order of sending and delivery of telegrams: *West. Un. Tel. Co.* v. *Pendleton*, 122 Id. 347.

A State may fix the maximum rates to be charged by public warehouses for storage and by common carriers for the transportation of goods and passengers, and prevent unjust discrimination, when the transportation is wholly within its limits. A number of cases seem to hold that the State possesses the same power to regulate rates for a carriage from points without to points within, and from points within to points without the State. It is now settled, however, that the statute of a State which attempts to regulate the fares and charges by railroad companies within its limits for a transportation which constitutes a part of commerce among the States is obnoxious to the Federal Constitution: *W., St. L. & P. Ry. Co.* v. *Illinois*, 118 U. S. 557; s. c. 105 Ill. 236; *Stone* v. *Farmers' L. & T. Co.*, 116 U. S. 307; *C., B. & Q. R. Co.* v. *Iowa*, 94 Id. 155; *Peik* v. *C. & N. W. Ry. Co.*, 94 Id. 164; *C., M. & St. P. R. Co.* v. *Ackley*, 94 Id. 179; *W. & St. P. R. Co.* v. *Blake*, 94 Id. 180; *Munn* v. *Illinois*, 94 Id. 113; *M. & O. R. Co.* v. *Sessions*, C. Ct. S. Dist. Miss., Sept. 1, 1886, 28 Fed. Rep. 592; *Pacific Coast Steamship Co.* v. *R. Commissioners*, C. Ct, Dist. Cal., Sept. 17, 1883, 18 Id. 10; *Kaeiser* v. *I. Cent. R. Co.*, C. Ct., S. Dist. Iowa, Oct. 24, 1883, 18 Id. 151; *L. & N. R. Co.* v. *R. Commissioners*, C. Ct., M. Dist. Tenn., Feb. 29, 1881, 19 Id. 679; *Carton* v. *I. C. R. Co.*, 59 Ia. 148; s. c. 22 Am. L. Reg. 373; *State* v. *C. & N. W. Ry. Co.*, 70 Ia. 162; *Hardy* v. *A., T. & S. Fé R. Co.*, 32 Kan. 698. See, also, *Railroad* v. *Maryland*, 21 Wall. 456; *The Daniel Ball*, 10 Id. 557.

8. *Sanitary and Inspection Laws.*— State sanitary and inspection laws are not invalid because they may affect, incidentally, interstate or foreign commerce. Thus a statute requiring the masters of vessels from abroad to register, under oath, within twenty-four hours after landing, a list of the passengers, their ages, occupations, and last legal settlements, is valid: *New York* v. *Miln*, 11 Pet. 102. So is an ordinance of St. Louis, requiring boats coming from below Memphis at certain seasons, and carrying above a certain number of passengers, to remain in quarantine forty-eight hours: *St. Louis* v. *McCoy*, 18 Mo. 238; *St. Louis* v. *Boffinger*, 19 Mo. 13. Statutes forbidding the importation of diseased cattle, or forbidding, under reasonable conditions, the importation of all cattle from diseased districts, are valid. *Wilson* v. *K., C. St. J. & C. P. R. Co.*, 60 Mo. 187; *Yeazel* v. *Alexandria*, 58 Ill. 254; *Stevens* v. *Brown*, 58 Ill. 289. An inspection law of Maryland, requiring all tobacco shipped out of the State to be brought to a State warehouse and marked, was declared constitutional: *Turner* v. *Maryland*, 101, U. S. 38.

A quarantine law, requiring vessels entering the port of New Orleans to be inspected and to pay the examining officer a fixed reasonable fee, was held to be an exercise of the police power not forbidden by the Federal Constitution: *Morgan* v. *Louisiana*, 118 U. S. 455. So, also, a statute requiring the inspection of corpses before being shipped from the State and the payment of an inspection fee: *In re Wong Yung Quy*, 6 Sawy. 442.

The State cannot, under the guise of sanitary and inspection laws, impose a tax on interstate or foreign commerce, or discriminate against the products of citizens of other States or countries. A tax upon passengers entering or leaving a State is a tax upon commerce and invalid, and it makes no difference that the tax is levied on the vessel or other carrier, or that it is for the purpose of paying the expenses of enforcing the quarantine laws: *People* v. *Pac. Mail Steamship Co.*, 8 Sawy. 640; *People* v. *Campagnie Générale Transatlantique*, 107 U. S. 59.

A statute prohibiting the importation of Texas and Indian cattle from March to December is unreasonable, a discrimination against the products of other States, and unconstitutional: *H. & St. J. R. Co.* v. *Husen*, 95 U. S. 465.

9. *Prohibitions on Manufacture and Sale.*—Laws which forbid the killing of game during certain seasons of the year, and prohibit the sale of the same during a like period, whether killed in the State or *elsewhere*, are not invalid as an interference with the power of Congress to regulate commerce among the States: *Magner* v. *People*, 97 Ill. 320; *Phelps* v. *Racey*, 60 N. Y. 10; *State* v. *Randolph*, 1 Mo. App. 15.

A statute is not void because it provides for the condemnation of vessels found taking oysters illegally, though applying to vessels licensed as coasters under Federal laws: *Corfield* v. *Coryell*, 4 Wash. C. C. 371.

A statute prohibiting the manufacture and sale of oleomargarine as food was declared constitutional: *In re Brosnahan*, C. Ct., W. Dist. Mo., June, 1883, 18 Fed. Rep. 62; *Powell* v. *Commonwealth*, 114 Pa. St. 265.

The prohibition of the manufacture of intoxicating liquors for sale either within or without the State is constitutional: *Pearson* v. *International Distillery*, S. Ct. Iowa, Sept. 10, 1887.

It is competent for the State to license or altogether prohibit the sale of intoxicating liquors. It has been said, *obiter*, that the prohibition of the sale of intoxicating liquors by the importer in the original package is an interference with the exclusive power of Congress to regulate commerce; but it is conceded that when the imported package has either passed from the importer or been broken up, the sale may be prohibited: *Perdue* v. *Ellis*, 18 Ga. 586; *State* v. *Robinson*, 49 Me. 285; *State* v. *Allmond*, 2 Houst. (Del.) 612. We incline to the belief that even a sale by the importer in the original package may be prohibited: *Dorman* v. *State*, 34 Ala. 216; *State* v. *Four Jugs*, 58 Vt. 140. See, also, *Groves* v. *Slaugter*, 15 Pet. 449. A prohibitory law which discriminates in favor of native wines is invalid, to the extent, at least, of the exception: *Weil* v. *Calhoun*, C. Ct. N. Dist. Ga., Dec. 16, 1885, 25 Fed. Rep. 865. *Contra*, *State* v. *Stucker*, 58 Ia. 496.

10. *Monopolies.*— A State cannot grant the exclusive privilege of navigating the waters of the State as against vessels licensed by the United States and engaged in interstate commerce, nor the exclusive privilege of erecting and operating telegraph lines

as against telegraph companies operating under Federal laws: *Gibbon* v. *Ogden*, 9 Wheat. 1; *Pensacola Tel. Co.* v. *West. Un. Tel. Co.*, 96 U. S. 1. See, also, *Conway* v. *Taylor's Exr.*, 1 Black 603.

11. *Taxation.* — Imported products cannot be taxed until they become a part of the common mass of property in the State. It is said that they do not become such until they pass from the hands of the importer, or the original package is broken up for sale or use: *Robbins* v. *Shelby County Tax. Dist.*, 120 U. S. 489; *Cook* v. *Pennsylvania*, 97 Id. 566; *Waring* v. *Mayor*, 8 Wall. 110; *Brown* v. *Maryland*, 12 Wheat. 419; *People* v. *Maring*, 3 Keyes, 374; *Hinson* v. *Lott*, 40 Ala. 123. See, also, *Coe* v. *Errol*, 116 U. S. 517; *The License Cases*, 5 How. 504. It seems to have been held that the products of sister States become part of the common mass of property and subject to taxation upon arrival at their destination: *Brown* v. *Houston*, 114 U. S. 622; *Hinson* v. *Lott*, 40 Ala. 123.

There can be no question that a tax imposed upon the products of another State or country not imposed on similar domestic products, whether levied directly or indirectly, as by requiring auctioneers, traveling salesmen, or others selling them to take out a special license, is unconstitutional: *Webber* v. *Virginia*, 103 U. S. 344; *Cook* v. *Pennsylvania*, 97 Id. 566; *Welton* v. *Missouri*, 91 Id. 275; *Guy* v. *Baltimore*, 100 Id. 434; *Ward* v. *Maryland*, 12 Wall. 418; *Tiernan* v. *Rinker*, 102 Id. 123; *In re Watson*, Dist. Ct. Dist. Vt., Dec. 1, 1882, 15 Fed. Rep. 511; *Jackson Mining Co.* v. *The Auditor Gen.* 32 Mich. 488; *State* v. *Furbush*, 72 Me. 493; *State* v. *North*, 27 Mo. 464; *Daniel* v. *Richmond*, 78 Ky. 542; *Marshalltown* v. *Blum*, 58 Ia. 184; *Van Buren* v. *Downing*, 41 Wis. 122; *Ex parte Thomas*, 71 Cal. 204; *Fecheimer* v. *Louisville*, Ct. App. Ky., Oct. 2, 1886.

It was long supposed that a uniform drummer tax, applicable alike to residents and non-residents, to domestic products and those of other States, was constitutional: *Woodruff* v. *Parham*, 8 Wall. 123; *Hinson* v. *Lott*, 8 Id. 148; *Machine Co.* v. *Gage*, 100 U. S. 676; *Ex parte Thornton*, 4 Hughes C. C. 220; *In re Rudolph*, U. S. C. Ct., Dist. Nevada, March 1880, 2 Fed. Rep. 65; *Ex parte Hanson*, U. S. Dist. Ct. Ore., June 24, 1886, 28 Id. 127; *Territory* v. *Farnsworth*, 5 Mont. 303; *Ex parte Asher*, 27 Am. Law Reg., N. S. 77; *Speer* v. *Commonwealth*, 23 Grat. (Va.) 935. But it now seems to be settled that interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on commerce carried on solely within the State, and to the extent that it affects interstate commerce a "drummer tax" is invalid: *Robbins* v. *Shelby County Tax. Dist.* 120 U. S. 489; *Corson* v. *Maryland*, 120 Id. 502; *Simmons Hardware Co.* v. *McGuire*, S. Ct. La., June 20, 1887.

Statutes imposing a "head tax" on alien passengers, or on vessels for landing them, or forbidding the landing of passengers of certain classes, and providing that the vessel landing them shall give bond that they will not become a burden on the State, or imposing a tax on the number of passengers carried from the State by common carriers, and like taxes, are unconstitutional: *Henderson* v. *Mayor of N. Y.*, 92 U. S. 259; *Chy Lung* v. *Freeman*, 92 Id. 275; *Steamboat Co.* v. *Port Wardens*, 6 Wall. 31; *Passenger Cases*, 7 How. 283; *Head Money Cases*, 112 U. S. 580; *Crandall* v. *Nevada*, 6 Wall. 35; *Webb* v. *Dunn*, 18 Fla. 721. A license tax on foreigners working gold mines has been upheld: *People*

v. *Neglee*, 1 Cal. 232. But a tax on all foreigners residing in a State, not engaged in certain occupations, is void: *Lin Sing* v. *Washburn*, 20 Cal. 534.

Vessels, cars, locomotives, and other instruments of commerce may be taxed as other property where registered or owned, though engaged partly or wholly in interstate or foreign commerce; but no license or other tax can be imposed on them for the privilege of entering or doing business in the ports of another State, or of transporting freight or passengers therein, so far as such transportation relates to interstate commerce: *Pickard* v. *Pullman Car Co.*, 117 U. S. 34; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 Id. 196; *Wiggins Ferry Co.* v. *East St. Louis*, 107 Id. 365; *Transportation Co.* v. *Wheeling*, 99 Id. 273; *Hays* v. *Pac. Mail Steamship Co.*, 17 How. 596; *Minot* v. *P. W. & B. R. Co.*, 2 Abb. C. C. 323; *Morgan* v. *Parham*, 16 Wall. 471; *St. Louis* v. *Wiggins Ferry Co.*, 11 Id. 423; *Gunther* v. *Baltimore*, 55 Md. 457; *New Orleans* v. *Eclipse Tow-Boat Co.*, 33 La. An. 647, s. c. 39 Am. Rep. 279; *W. P. C. Trans. Co.* v. *Wheeling*, 9 W. Va. 170.

A State has the power to require foreign insurance companies and other corporations to establish offices, take out licenses, pay fees, etc., before doing business in the State; but it cannot compel corporations engaged in interstate commerce to comply with such requirements: *Cooper Mfg. Co.* v. *Ferguson*, 113 727; *N. W. R. Co.* v. *Commonwealth*, S. Ct. Pa., Oct. 4, 1886; *Indiana* v. *Pullman Car Co.*, C. Ct. Dist. Indiana, March 8, 1883, 16 Fed. Rep. 193; *Paul* v. *Virginia*, 8 Wall. 168.

A tax on the number of passengers or tons of freight carried by railroads, or on telegrams, is void, so far as it relates to passengers or freight carried across State lines, or messages sent to or received from points without the State: *Telegraph Co.* v. *Texas*, 105 U. S. 460; *E. Ry. Co.* v. *State*, 31 N. J. L. 531; *R. Ry. Co.* v. *Pennsylvania*, 15 Wall. 284; *R. R. Co.* v. *Pennsylvania*, 15 Id. 232.

Taxes on the gross receipts of railroad and telegraph companies, and license taxes on the business of telegraph and express companies, not intended or used to obstruct business, have been declared valid, though incidentally affecting interstate commerce: *Osborne* v. *Mobile*, 16 Wall. 479; *M. & L. R. R. Co.* v. *Nolan*, C. Ct. W. Dist. Tenn., Sept. 9, 1882, 14 Fed. Rep. 532; *R. R. Co.* v. *Pennsylvania*, 15 Wall. 284; *Walcott* v. *People*, 17 Mich. 68; *Mobile* v. *Leloup*, 76 Ala. 401; *So. Express Co.* v. *Mobile*, 49 Id. 404; *West. Un. Tel. Co.* v. *Mayer*, 28 O. St. 521; see, however, *Fargo* v. *Michigan*, 121 U. S. 230; *Indiana* v. *Am. Express Co.*, 7 Biss. 227.

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